



**Danny Tobey, M.D., J.D.**

**Partner**

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Danny Tobey is a medical doctor and software entrepreneur who represents life sciences, technology and healthcare clients in a variety of regulatory and litigation matters involving FDA, CDC, HHS, CMS, private payers, and tort and commercial litigants. Danny leads the firm's team that assists companies navigating the legal landscape of emerging and disruptive technologies including AI and data science. In 2019, Danny received a Burton Award from the Library of Congress recognizing "the best of the best writers in the legal profession" among the nation's top 1,000 largest law firms.

A graduate of Harvard College, Yale Law School, and UT Southwestern Medical School, Danny has litigated successfully some of his clients' most challenging and important cases.

He designed the winning scientific case in the first Hatch-Waxman suit in the Eastern District of Texas. He obtained a unanimous reversal in federal appellate court in an R&D tax case of first impression, increasing his clients' tax refund from low-six to high-seven figures. He has successfully handled as lead counsel litigations arising from M&A transactions for a molecular diagnostics company and others. He has represented healthcare clients in matters ranging from credentialing and internal investigation to peer review and business tort claims.

Danny is a thought leader on legal issues in medicine and AI. He advised the American Medical Association on its 2019 policy on AI and medical liability and was invited to present at the inaugural AI, Ethics, and Society conference sponsored by Google and IBM. Danny's clients include IDx, the first FDA-approved fully autonomous AI diagnostic, and Spectral MD, the Breakthrough-designated AI imaging system funded by BARDA. Danny advises leading global pharmaceutical and device companies on adopting and designing AI systems. His writing on legal issues in medicine and biotechnology appears in National Law Journal, American Health Law Association Connections, Proceedings of the Association for the Advancement of Artificial Intelligence, Yale Journal of Law & Technology, and Health Law Litigation. Danny led a successful software company from inception to acquisition. His original medical research appears in Pediatric Blood & Cancer and Journal of Child and Adolescent Psychopharmacology.

Beyond healthcare, Danny has represented private equity, finance and other clients in some of their most pressing cases in state and federal court. He has argued successfully before the en banc Delaware Supreme Court and the Fifth Circuit Court of Appeals among others.

#### RELATED SERVICES

- Litigation, Arbitration and Investigations
- Appellate Advocacy
- Patent Litigation
- FDA

#### RELATED SECTORS

- Life Sciences
- Technology
- Healthcare

Danny is Chair of the Board of Directors of the AT&T Performing Arts Center, the largest performing arts district in the United States. He chairs the Legal Advisory Counsel of the Perot Museum of Nature and Science and has served on the boards of the Parkland Foundation, the SPCA of Texas, the Texas Israel Alliance, and the regional Anti-Defamation League. He has co-chaired the Judiciary Committee and the Membership & Admissions Committee of the Dallas Bar Association and sits on the Governing Council of its Business Litigation Section. Danny previously served on the Executive Committee of the Yale Law School Association.

## EXPERIENCE

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### REPRESENTATIVE MATTERS

- Obtained as lead counsel for Fortune 100 company a voluntary complete dismissal with prejudice of all claims against it in federal court on the eve of filing motion to dismiss
- Successfully argued before Fifth Circuit Court of Appeals, winning affirmance of dismissal of all claims against client in a trade secrets case; opinion issued two weeks after oral argument
- Successfully represented life-sciences company as lead counsel in eight-figure dispute over acquisition
- Argued before *en banc* Delaware Supreme Court, winning affirmance of nearly US\$1 million fee award for private equity client against bad-faith litigants; affirmed one day after oral argument by the Chief Justice writing for the full court
- Argued before Fifth Circuit Court of Appeals, winning unanimous reversal and remand on complex tax issue of first impression involving research and development tax credits; authored winning brief on remand
- Represented Medicare Administrative Contractor in defense against consolidated complaint before the US Department of Health and Human Services (HHS)
- Represented client in litigation with the US Food and Drug Administration (FDA) involving clinical trial design
- Helped obtain complete victory for pharmaceutical client in first Hatch-Waxman case in the Eastern District of Texas; used medical background to prepare scientific non-obviousness case; federal court validated all three patents and enjoined competitors from violating them; result affirmed by the Federal Circuit Court of Appeals
- Successfully defended major bank against US\$19 billion alternative credit manager; handled winning first-chair argument preserving client's counterclaims for US\$37.5 million; led drafting of defense motions resulting in dismissal of US\$7 million of plaintiff's US\$11 million in claims
- Obtained dismissal on forum-selection grounds for private equity fund in suit involving allegations of fraud and breach of contract
- Represented multiple hospitals in peer review and credentialing matters
- Representing molecular diagnostics laboratory in major reimbursement dispute with payor
- Conducted investigation for hospital system involving allegations of self-referral and anti-kickback violations
- Successfully resolved as mediator case involving allegations of self-referral and anti-kickback violations
- Obtained affirmance of complete dismissal of health privacy invasion claims against prominent media outlet in state appellate court
- Represented healthcare system in major case involving allegations of physician misconduct and reporting obligations; client found to have no liability on appeal
- Represented Quality Improvement Organization against allegations of medical malpractice invoking federal immunity
- Represented distressed lender advising on payor disputes of a portfolio hospital system and related proceedings
- Successfully defended as lead trial counsel a historic religious denomination sued by a breakaway faction in a church property case in Texas state court; obtained a multimillion-dollar (net) settlement payment to defendant-client and dismissal of all plaintiffs' claims
- Lead trial counsel for the SPCA of Texas defending against a complex probate matter; settled favorably at mediation
- Second-chaired six-week jury trial in state court defending against US\$22 million fraud claim; successfully argued opposition to summary judgment, preserving the client's suit for aiding and abetting breach of fiduciary duty; examined trial witnesses, argued directed verdict and delivered portion of the closing argument

- Handled summary judgment proceedings for preeminent law-firm client, obtaining dismissal of all claims in a breach of contract suit
- Obtained denial of petition for review by Texas Supreme Court for prominent New York law firm, leaving in place reversal and rendition of dismissal by Dallas Court of Appeals
- Led briefing before Fifth Circuit Court of Appeals, winning affirmance in pertinent part of plaintiff investment firm's summary judgment win on claims of fraudulent transfer and piercing the corporate veil (monetary damages)

## CREDENTIALS

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### Admissions

- Texas

### Prior Experience

- Legal intern to the Chief of Criminal Appeals, United States Attorney's Office for the Southern District of New York, 2001

### Recognitions

- Named a Fellow of the Texas Bar Foundation
- Selected to the Texas Rising Stars list, Super Lawyers (Thomson Reuters), 2012–2016
- Cardozo Society, "Outstanding Attorney Under 40," 2012–2015

### Education

- M.D., The University of Texas Southwestern Medical School 2008  
Southwestern Foundation Scholarship for outstanding scholastic achievements; four-year Alumni Scholar
- J.D., Yale Law School 2003  
Benjamin Scharps Prize for "the best paper by a third-year student";  
Margaret Gruter Prize for the best paper on biological sciences and the law
- A.B., Harvard University 1999  
*magna cum laude* with Highest Honors in Social Studies  
1999 Philo Sherman Bennett Award for "the best essay discussing the principles of free government"  
John Harvard Scholarship for "academic achievement of the highest distinction"  
Phi Beta Kappa

### Memberships

- AT&T Performing Arts Center – Chair-Elect (2019–2021); Board of Directors, 2016–present (Executive Committee, 2018–present)
- Parkland Foundation - Board of Directors, 2016–present (Executive Committee, 2017–present); Capital Campaign Steering Committee, 2013–2015
- SPCA of Texas - Board of Directors, 2016–2019
- Perot Museum of Nature and Science – Board of Directors, 2016–present (Chair, Legal Advisory Committee (2019–present), Executive Committee (2019–present)); Museum Board, 2013–2016; Legal Advisory Committee, 2013–present; Advisory Board, 2012–2013
- Anti-Defamation League, Texoma region – Board of Directors, 2017–present
- Dallas Bar Association - Judiciary Committee, 2012–present; Co-Chair, 2016; Admissions and Membership Committee, 2013–present; Co-Chair, 2018; Governing Council, Business Litigation Section 2018–present
- Texas Israel Alliance (Board of Directors, 2019–present)

- Harvard Club of Dallas - Harvard Schools Committee, Interviewer, 2003–present
- Leadership Arts Institute - Business Council for the Arts, Leadership Class of 2011–2012

## INSIGHTS

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### Publications

#### **Lessons learned about autonomous AI: Finding a safe, efficacious and ethical path through the development process**

27 July 2020

A literature review of bioethical principles for AI and evaluation rules for autonomous AI, grounded in bioethical principles.

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#### **Digital health: Connecting patients and services in a COVID-19 world**

13 July 2020

Telehealth technologies have emerged as a powerful tool to connect patients with vital services while reducing in-person interactions that can spread the virus.

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#### **Protecting AI technologies through patents: A US guide**

7 May 2020

A strong patent portfolio developed around a company's artificial intelligence innovations is an important asset.

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#### **Coronavirus: Overview of healthcare funding stimulus and policy provisions in the CARES Act (United States)**

10 April 2020

Among numerous health policy provisions in the CARES Act is one allowing BARDA to partner with private sector companies on R&D.

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#### **Coronavirus: What happens to my lawsuit now?**

1 April 2020

Some of these shifts in legal practice may lead to long-term efficiencies that benefit clients and improve access.

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## Software Malpractice in the Age of AI: A Guide for the Wary Tech Company

11 June 2019

Danny Tobey analyzes the case law rejecting software malpractice for clues about where the doctrine might go in the age of AI, then discusses what technology companies can learn from the safety enhancements of doctors, lawyers, and other historic professionals who have adapted to such heightened legal scrutiny for years.

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- "Contributed: The Rise of Femtech," *MobiHealthNews*, December 11, 2020
- "Lessons Learned About Autonomous AI: Finding a Safe, Efficacious, and Ethical Path Through the Development Process," *American Journal of Ophthalmology*, March 12, 2020
- "Medical Frontiers in AI Liability," *American Health Lawyers Association Magazine*, February 2020
- "DLA Piper Announces New Artificial Intelligence Practice," *Law360*, May 2019
- "AI For GCs: What You Need to Know as Your Company Adapts," *ACC Docket*, March 2019
- "Explainability: Where AI And Liability Meet," *Law360*, February 2019
- "Software Malpractice in the Age of AI," *2018 Proceedings of the Association for the Advancement of AI*, February 2018
- "AI is Here, Is Your Company Ready? (Hint: No)," *National Law Journal*, December 2017
- Danny is a former Literature Editor of the *Harvard Lampoon*, a published novelist and a former copywriter at a Madison Avenue advertising agency. His writing on AI and other legal issues appears in the *National Law Journal*, the *2018 AAAI Proceedings on Artificial Intelligence*, *Health Law Litigation* and the *Yale Journal of Law & Technology*.

## Events

### Upcoming

#### 2021 Healthcare Leadership Conference: Day 2 - Unlocking innovation and collaboration through digital health and technology

9 March 2021 | 12:00 PM - 3:30 PM ET  
2021 Healthcare Leadership Conference

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### Previous

#### Building a vaccination plan: Key considerations for businesses

18 February 2021 | 9:00 - 10:00 PT  
Webinar

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#### How technology is impacting healthcare delivery in a COVID-19 world

13 January 2021 | 1:00 - 2:00 EST  
Webinar

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## Health tech market midst and post COVID-19

14 September 2020  
Webinar

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## Considerations for drug pricing and demonstrating value in a post-pandemic environment

5 August 2020 | 12:00 – 1:00 ET  
Webinar

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## 9th Annual Advanced Trial Strategies Conference

6-7 February 2020

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## AI Summit

20 - 22 August 2019

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## AI is everywhere: a sector by sector discussion regarding the opportunities and challenges of artificial intelligence

19 JUN 2019  
Boston

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## Healthcare Leadership Insights Conference 2019

14 MAR 2019  
Miami

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- Panelist, "Healthy vs Hype: The State of AI in Healthcare," August 30th, 2020
- Speaker, "Artificial Intelligence and Health Care: The Intersection of Science and Law," *WCL*, July 8, 2020
- Panelist: "The People vs. OJ Simpson: Strategy Lessons from the Trial of the Century," February, 2020
- Panelist: "Effective Motion Presentation for the Busy Trial Court: Drafting and Oral Arguments," February, 2020
- Moderator, Fireside Chat with Dr. Amy Abernethy, Principal Deputy Commissioner of the US Food and Drug Administration, Texas Israel Life Sciences and Healthcare Innovation Conference, October 25, 2019
- Distinguished Speaker, Texas Analytics Summit 2019 Sponsored by Dell, McCombs School of Business, University of Texas, "Streamline Your Legal and Privacy Approach to AI" October 17-18, 2019
- Speaker, Texas Analytics Summit, October 2019
- Speaker, *Streamline Your Legal and Privacy Approach to AI*, Xavier AI Summit, August 2019
- Moderator, *Raising Funds for Your Medical Device Company*, Biocom's DeviceFest & Digital Health Conference, Moderator, Correlation Ventures, GTCR, August 2019

- Moderator, *AI is Everywhere: A Sector-by-Sector discussion regarding the Opportunities and Challenges with Artificial Intelligence*, Healthcare: Novartis, IBM Watson Health, Athenahealth, IDx, Suffolk Law School, June 2019
- Faculty, TMXc Accelerator, Texas Medical Center, "Digital Health Regulation," February 25, 2019, with Kristi Kung.
- "Fireside Chat," Duke Institute for Health Innovation, December 3, 2018
- Presenter, "Mitigating Legal Risks in Digital Health Adoption," with Kristi Kung, November 13, 2018
- Presenter, "Emerging Medical and Legal Issues in AI," October 7, 2018
- Presenter, "Email Through the Eyes of Judges and Juries"

## NEWS

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### DLA Piper Partner Danny Tobey appointed chairperson of AT&T Performing Arts Center Board of Directors

13 October 2020

Danny Tobey has been appointed Chair of the Board of Directors for the AT&T Performing Arts Center.

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## MEDIA MENTIONS

- "LaunchBio Partners With DLA Piper to Accelerate North Texas as a Hub for Life Science Startups," *Dallas Innovates*, February 10, 2021
- "How Biden and Harris could refocus the White House on science," *Engadget*, January 25, 2021
- "Covid-19 has let digital health prove itself," *Globes*, September 21, 2020
- Podcast, "Digital health: Connecting patients and services in a COVID-19 world," *DLA Piper*, July 13, 2020
- "AI-Related Lawsuits Are Coming," *SHRM*, November 1, 2019
- "Listen: Developing AI Tech Can Mean Walking Through A Patient Privacy Mine," *Medtech Insight*, September 13, 2019
- Podcast, "Listen: Developing AI Tech Can Mean Walking Through A Patient Privacy Mine," *Medtech Insight*, September 13, 2019
- "AT&T Performing Arts Center Board Names News Chair-Elect and Directors," *Dallas Weekly*, September 7, 2019
- "AI Technology And Navigating The HIPAA Minefield," *MedTech Insight*, September 13, 2019